

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NORTHSHORE SHEET METAL, INC.,

Plaintiff,

v.

SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION,
LOCAL 66,

Defendant.

Case No. 2:15-cv-01349 MJP

***PLAINTIFF'S REPLY IN SUPPORT OF
ITS MOTION TO QUASH AND/OR
MODIFY SUBPOENAS DUCES TECUM***

Noted on Motion Calendar: January 8, 2016

Plaintiff Northshore Sheet Metal ("Plaintiff" or "Northshore") provides its reply in support of its motion to quash and/or modify Defendant Sheet Metal Workers International Association, Local 66's ("Defendant" or "Union") subpoenas duces tecum. The Union has improperly asserted that Northshore lacks standing to certain objections in this matter, used an improper purpose and method to obtain the information, and ignored Northshore's efforts to obtain an adequate protective order.

1 **A. NORTHSHORE HAS STANDING**

2 The Union claims that Plaintiff lacks standing to assert that the general contractor
3 subpoenas are overly broad, unduly burdensome, and harassing because the General
4 Contractors failed to object. The Union's argument is not correct.

5 First, a general contractor did properly object. GLY Construction ("GLY") objected
6 to the Union's subpoena on December 1, 2015. Hilgenfeld Supp. Decl., Exhibit 7. On
7 December 4, 2015, the Union then re-served its subpoena without rescinding its original
8 subpoena.¹ As a matter of courtesy, GLY provided the same objection on December 30,
9 2015. GLY's initial objection was sufficient to satisfy the demands of Rule 45(d). These
10 rules are designed to protect non-party litigants from unnecessary and burdensome requests.
11 GLY Construction responded in an adequate and timely manner. The rules also require that
12 the serving party take all reasonable precaution to avoid unreasonable burden or expense.
13 Fed. R. Civ. P. 45(d)(1). The Union's actions ignore this requirement.

14 Moreover, the Union further claims that Northshore cannot object on an overly
15 broad, unduly burdensome or harassment bases because Northshore was not the entity
16 served. The Union overstates the law in this regard. Rule 26(c) permits either a third-party
17 or "a party" to file a motion to quash subpoenas. Fed. R. Civ. P. 26(c). A Party has
18 standing to challenge a subpoena where its "own interests may be implicated." *Johnson v.*
19 *U.S. Bancorp*, 2012 WL 6726523, at *2 (W.D. Wash. 2012) (defendant, U.S. Bank, had
20 standing to challenge a subpoena issued to one of its officers). It is correct to state that
21 Northshore may not protect the rights of another party; that, however, does not mean that a
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24 ¹ The Union only rescinded the October 27, 2015 Mortensen Construction subpoena. The Union did not
25 rescind the October 27 subpoena issued to GLY Construction, nor did it rescind its subpoena to Lease Crutcher
Lewis.

1 party may not object to overly broad or unduly burdensome subpoenas. The more accurate
2 examination of the law on this area is as follows: “A party may not ask for an order to
3 protect the rights of another party or a witness if that party or witness does not claim
4 protection for himself, but a party may seek an order if it believes its own interest is
5 jeopardized by discovery sought from a third person.” *Koh v. S.C. John & Son, Inc.*,
6 2011 WL 940227 (N.D. Cal. 2011) (not reported) (quoting 8A Federal Practice and
7 Procedure Civil 3d § 2035).

8 In *Adams v. U.S.*, 2010 WL 55550. at *3 (D. Idaho 2010) (not reported), the
9 defendant (DuPont) sought information from a third party. The information sought involved
10 settlement documents between the third party and plaintiffs. The plaintiffs contested the
11 subpoenas. As noted by the Court, the key question is whether a party “believes that its own
12 interest is jeopardized by discovery sought from [another.]” *Id.* (quoting 8 Federal Practice
13 & Procedure, § 2035, at p. 475 (1994)).

14 Here, similarly, the Union seeks information from Northshore’s customers related
15 entirely to Northshore. The information sought, and the manner it has been sought, is
16 intended to harass Northshore’s customers thereby diverting work to other businesses. Rule
17 26(c) further provides that an interested party may seek the Court’s protection to stop
18 annoyance, undue burden and expense. Northshore certainly has an interest in this matter.

19 Finally, Plaintiff’s standing is also based upon the fact that the subpoenas seek
20 Plaintiff’s confidential commercial information. The federal rules expressly provide for the
21 ability to bring forth a motion to quash or modify upon those grounds. Fed. R. Civ. P.
22 45(d)(3)(B). Northshore has provided an adequate showing that its proprietary commercial
23 information (such as bid pricing and practices) is at risk. See Dkt. 35, ¶¶ 3-6. The
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1 information sought by the Union requires protection and Northshore is permitted to quash
2 the subpoenas permitting an adequate opportunity to obtain such protection.

3 **B. THE UNION'S ILLEGITIMATE PURPOSE REQUIRES THE**
4 **COURT TO QUASH THE SUBPOENAS**

5 The Union is using the discovery process to harass Northshore's customers. The
6 Union is sending a message to Northshore's customers that if they intend to do business with
7 Northshore it will result in becoming entangled in the legal process resulting in increased
8 costs and attorney fees. This message is solidified by the Union's uncontested message to
9 its members: it will punish Northshore and that includes diverting business to its
10 competitors. Dkt. 35, ¶ 5. The Union does not contest this message.

11 The Union's stated reason for the subpoenaed information relates entirely to
12 damages. This stated reason does not explain the breadth of the request, nor why the request
13 was not directed to Northshore. To the extent there is information reasonably calculated to
14 the issue of damages, such request should be narrowly tailored to meet that objective. The
15 Union, instead, seeks any correspondence or contracts even casually related to Northshore.

16 The Union also mistakenly claims that Northshore has shown the true relevant
17 timeframe with its own discovery; therefore, its subpoenas are proper. The Union, however,
18 intentionally ignores the purpose for the information sought and each party's obligation to
19 non-parties as directed by the federal rules. Northshore has sought information from the
20 Union from June 1, 2015 onward about Northshore or the strike itself. Northshore,
21 however, is required to prove the strike's motive. Liability goes beyond damages, and is
22 part of Northshore's burden of proof. The Union, however, cannot use the same logic to
23 dictate the scope of relevancy as to its attempt to obtain information from the general
24 contractors on the damages of the strike. Information related to the damages held by third
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1 parties caused by the Union's illegal strike is inherently more limited than information
2 related to the Union's motive behind the strike. However, even to the extent there is limited
3 value in the pre-strike information as to damages, such an argument has no effect on the
4 overbreadth of the request itself.

5 **C. PROTECTIVE ORDER**

6 The federal rules require that opposing parties be provided advance notice of any
7 subpoena. Fed. R. Civ. P. 45(a)(4). This rule is designed to provide the parties an
8 opportunity to resolve any problems prior to the service of the subpoenas and without court
9 intervention. The Advisory Committee note to the 2013 amendment explained that the point
10 of prior notice is to allow opposing party an opportunity to object or to serve a subpoena
11 with additional information.

12 Here, on the same day Northshore was provided with a copy of the subpoena,
13 Northshore sought a brief delay in serving the subpoenas. Dkt. 34-1, Exhibit 1. The brief
14 delay was requested to permit the parties an opportunity to seek a protective order because
15 the information sought would have included highly confidential business information. The
16 Union refused. The Union's actions have caused Northshore to request the general
17 contractors to delay in responding to the subpoenas until Northshore had an adequate
18 opportunity to protect the information sought. Dkt 34-1, at *2, 3. Only after the Union
19 refused to even consider a brief delay did Northshore inform the general contractors of its
20 intent to seek a protective order. Hilgenfeld Supp. Decl., Exhibit 8. Northshore has never
21 interfered with the Union's ability to conduct discovery. Northshore has taken steps to
22 protect its confidential commercial interests. The confidential commercial information
23 sought by the Union's subpoenas, if provided without an adequate protective order, will
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1 have a permanent and extremely prejudicial impact on Northshore. Northshore's actions are
 2 entirely appropriate and consistent with the federal rules.

3 The Union has also claimed that Plaintiff simply made a vague description as to the
 4 information it sought to protect. As a result, the Union could not ascertain Northshore's
 5 concerns. Such a statement is erroneous. Plaintiff expressly informed the Union that it
 6 needed adequate protection to prohibit the dissemination of bid pricing information,
 7 proprietary technical information related to the performance of a project. Plaintiff provided
 8 further specifications in its draft protective order provided to Plaintiff. Dkt. 34-5,
 9 Exhibits 1, 5, 6. Bid pricing is not a vague concept; nor, is proprietary technical information
 10 related to the performance of a project a vague concept. The Union fully understood what
 11 Northshore sought to protect.

12 Finally, a two-tiered protective order is required in this instance. The Union has
 13 made it clear that it intends to punish Northshore by diverting work to Northshore's
 14 competitors. Dkt. 35, ¶ 5. The Union does not contest this point. The Union also refused to
 15 even briefly delay service to permit Northshore an opportunity to obtain an adequate
 16 protective order. The subpoenas should be quashed until an adequate protective order is in
 17 place; or, alternatively, the subpoenas should be modified

18 Respectfully Submitted this 8th day of January, 2016.

19 By: /s/ Christopher L. Hilgenfeld

20 Christopher L. Hilgenfeld, WSBA #36037
 21 Davis Grimm Payne & Marra
 22 701 5th Avenue, Suite 4040
 23 Seattle, WA 98104-7097
 24 Ph. (206) 447-0182 | Fax: (206) 622-9927
 25 Email: chilgenfeld@davisgrimmpayne.com
Attorneys for Plaintiff
Northshore Sheet Metal, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January, 2016, I electronically filed the foregoing ***PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO QUASH AND/OR MODIFY SUBPOENAS DUCES TECUM*** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Attorneys for Defendant:

Daniel Hutzenbiler
Margaret A. Burnham
Robblee Detwiler & Black
2101 Fourth Avenue, Suite 1000
Seattle, WA 98121-2317
Email: dhutzenbiler@unionattorneysnw.com
Email: mburnham@unionattorneysnw.com



Betsy E. Green, Legal Assistant to
Attorneys for Northshore Sheet Metal Inc.
E-mail: bgreen@davisgrimmpayne.com